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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

DOROTHEA HEIMBACH,

Plaintiff,

vs.

STANISLAUS COUNTY, JUSTIN  
CAMARA, and ZA XIONG,

Defendants.

2:23-cv-01887-DJC-CSK

*Assigned to:*

District Judge Daniel J. Calabretta

**PLAINTIFF'S MOTION IN LIMINE  
#1 TO EXCLUDE CERTAIN  
OPINIONS OF ROBERT BUX  
UNDER DAUBERT**

FPTC Date: December 18, 2025

Time: 1:30 PM

Location: Courtroom 7

PLEASE TAKE NOTICE that on December 18, 2025, in Courtroom 7 of the United States District Court for the Eastern District of California, at 501 I Street, Sacramento, CA 95814, Plaintiff, DOROTHEA HEIMBACH, hereby moves in limine for an order excluding, at the trial of the above-referenced matter:

- 1) Any testimony or opinions from Dr. Bux regarding Anthony Silva's pain and suffering;
- 2) Any testimony or opinions from Dr. Bux regarding the standard of care for nurses and doctors or that their negligence caused Mr. Silva's death; and

1 3) Any testimony or opinions from Dr. Bux that Anthony Silva caused or  
2 contributed to his own death by refusing to comply with medical  
3 directives.

4 This Motion is based on this Notice of Motion, the attached Memorandum of  
5 Points and Authorities, the records and files of this Court, and upon such other oral  
6 and documentary evidence as may be presented at the time of the hearing.  
7  
8

9 Dated: December 11, 2025

**LAW OFFICES OF DALE K. GALIPO**

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11 By: /s/ Cooper Alison-Mayne  
12 Dale K. Galipo  
13 Cooper Alison-Mayne  
14 *Attorneys for Plaintiff Dorothy Heimbach*  
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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Plaintiffs respectfully move this Court to exclude certain opinions of Defendant's retained expert, Dr. Robert C. Bux. Many of Dr. Bux's proffered opinions fail to meet the standards of Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and should therefore be excluded. Specifically, this motion seeks to exclude Dr. Bux's opinions regarding: (1) Anthony Silva's pain and suffering; (2) the standard of care for nurses and doctors, or that their negligent conduct caused Mr. Silva's death; and (3) the claim that Mr. Silva caused his own death through noncompliance with medical directives.

### **II. LEGAL STANDARD**

Federal Rule of Evidence 702 permits expert testimony only when the proponent demonstrates to the Court by a preponderance of evidence that: (1) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (2) the testimony is based on sufficient facts or data; (3) the testimony is the product of reliable principles and methods; and (4) the expert has reliably applied the principles and methods to the facts of the case. Fed. R. Evid. 702.

Under *Daubert*, the trial court serves as a gatekeeper to ensure that expert testimony is both reliable and relevant. *Daubert*, 509 U.S. at 589. The proponent of the expert testimony bears the burden of establishing admissibility by a preponderance of the evidence. *Lust v. Merrell Dow Pharms., Inc.*, 89 F.3d 594, 598 (9th Cir. 1996). An expert's opinion must be based on "more than subjective belief or unsupported speculation." *Daubert*, 509 U.S. at 590.

**III. ARGUMENT**

**A. Dr. Bux Should Not Be Permitted to Opine About Pain and Suffering**

Dr. Bux admitted in his deposition that he does not intend to offer any opinions regarding Mr. Silva's pain and discomfort. When asked directly whether he planned to give opinions on this subject, he responded unequivocally:

Q. Are you planning on giving any opinions as to his pain and discomfort during all of these complications that he was having?

A. No.

Bux Depo. 30:23–31:1 (*See* “Exhibit A” to the Declaration of Cooper Alison-Mayne in Support of Plaintiff’s Motion in Limine No. 1, herein after “Mayne Decl.”) portions of the Deposition Transcript of Robert Charles Bux, MD) Because Dr. Bux has disclaimed any intent to offer such opinions, any testimony on pain and suffering should be precluded.

**B. Dr. Bux Should Not Be Permitted to Opine About Standard of Care for Nurses, Doctors, or the Hospital**

Dr. Bux is a board-certified anatomical and forensic pathologist. Bux Depo. 8:18–20 (Exhibit A to Mayne Decl). He is not qualified to testify regarding the standard of care for nurses, physicians, or hospitals—particularly in the context of rehabilitative care for a quadriplegic patient.

When asked whether a patient with Mr. Silva's type of injury generally needs lifetime care, Dr. Bux candidly admitted he lacks the relevant expertise:

Q. Does someone with that type of injury generally need lifetime care?

MR. WHITEFLEET: Objection. It's outside the scope.

THE WITNESS: Yeah, I don't—I don't have a practice taking care of those kind of injuries. I never did when I

1 was in practice in the Army and I never did in terms of—  
2 of when I interned, so I—it's out of my scope of  
3 understanding and knowledge.

4 Bux Depo. 8:8–16 (Exhibit A to Mayne Decl). Similarly, when asked about what  
5 activities he expected a quadriplegic patient to perform, Dr. Bux acknowledged his  
6 lack of qualifications: "Well, I'm not—I'm not an occupational therapist." Bux  
7 Depo. 62:4–7 (Exhibit A to Mayne Decl).

8 Dr. Bux further confirmed he would not opine on whether Mr. Silva's  
9 medical treatment was reasonable or necessary:

10 Q. Okay. Are you going to give any opinions as to  
11 whether any of the treatment was not reasonable or  
12 necessary?

13 A. No.

14 Bux Depo. 16:19–22 (Exhibit A to Mayne Decl).

15 The Ninth Circuit has squarely addressed this issue. In *Trujillo v. County of*  
16 *Los Angeles*, 751 F. App'x 968 (9th Cir. 2018), the court found the district court  
17 abused its discretion by allowing two doctors to testify about the standard of care  
18 of a nurse and nurse practitioner. *Id.* at 972. The court held that doctors generally  
19 are not permitted to testify about the standard of care for nurses "absent some  
20 special certification, expertise, or relevant knowledge." *Id.*

21 The *Trujillo* court cited *Lattimore v. Dickey*, 239 Cal. App. 4th 959 (2015),  
22 for the proposition that "where a medical specialist is alleged to have acted  
23 negligently, the 'specialist must possess and use the learning, care and skill  
24 normally possessed and exercised by practitioners of that specialty under the same  
25 or similar circumstances.'" *Id.* (citation omitted).

26 As a forensic pathologist, Dr. Bux lacks the specialized expertise to opine on  
27 the standard of care for nurses or treating physicians in providing rehabilitative  
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1 care to a quadriplegic patient. His own testimony confirms as much. Any opinions  
2 on these topics should be excluded.

3 **C. Dr. Bux's Opinion That Mr. Silva Caused His Own Death by**  
4 **Refusing to Comply with Medical Directives Is Outside of his**  
5 **Expertise and Speculative**

6 Dr. Bux's opinion that Mr. Silva's alleged noncompliance contributed to his  
7 death is pure speculation unsupported by the evidence. Dr. Bux himself admitted  
8 that the medical records do not provide a clear picture of what Mr. Silva's alleged  
9 noncompliance actually entailed:

10 Q. And I noticed in your review there's multiple times  
11 you noted he was compliant and other times non-  
12 compliant. Would that be fair?

13 A. Right. But it's not clear to me—it's not clear to me  
14 exactly what that included. You know, if you want to get  
15 the best view, you need to talk to one of the doctors that  
16 took care of him over that—over that time period when  
17 he was in Central Valley Specialty Hospital, because the  
18 notes are not real good about that.

19 Bux Depo. 28:17–29:2 (Exhibit A to Mayne Decl).

20 When asked about Mr. Silva's ability to prevent his own pressure ulcers  
21 given his quadriplegia, Dr. Bux acknowledged that the nursing staff bore  
22 responsibility for repositioning him:

23 THE WITNESS: He could move somewhat. And how  
24 much of that would have been enough, should have been  
25 able to prevent ulcers that were on his arms, on his  
26 shoulders, on his upper back. How far down he would be  
27 able to do that, I don't know. That's what the nurses are  
28 there for, and needed to do, and I don't think it—it didn't

1 happen or he wouldn't have had the—the depth and size  
2 of the decubitus ulcers in this short—relative short period  
3 of time in which they developed.

4 Q. Right. But I guess what I'm getting at is, given his  
5 condition, would you agree that he was reliant on the  
6 nursing staff to move him?

7 THE WITNESS: Yeah, he was reliant on the nursing  
8 staff to do his nursing care, and in terms of moving him  
9 every two hours, they failed.

10 Bux Depo. 26:3–27:20 (Exhibit A to Mayne Decl).

11 Notably, Defendants' own expert, Robert Shavelle, considered whether  
12 "non-compliant" behavior was a relevant factor in adjusting Mr. Silva's life-  
13 expectancy calculation and determined that no adjustment was necessary. (*See*  
14 “Exhibit C” to Mayne Decl, portions of Dr. Robert Shavelle, Rule 26 Report) This  
15 is further indication that Dr. Bux is speculating when he opines that Mr. Silva's  
16 alleged noncompliance caused his death. Without a foundation in the record  
17 establishing what specific conduct constituted "noncompliance," how frequently it  
18 occurred, and how it causally contributed to Mr. Silva's death, Dr. Bux's opinion  
19 amounts to nothing more than "subjective belief or unsupported speculation" that  
20 *Daubert* forbids. 509 U.S. at 590.

21 Additionally, Dr. Bux's opinion regarding Mr. Silva's alleged noncompliance  
22 is irrelevant to the issues before the jury because it fails to consider Mr. Silva's  
23 capacity to comply with medical directives given his physical and mental  
24 limitations.

25 California law is clear that an injured person's duty to mitigate damages  
26 must be evaluated from the perspective of a reasonable person in his situation—not  
27 an able-bodied, mentally healthy individual. "The correct rule is that an injured  
28 person must use reasonable diligence in caring for his injuries. What is reasonable

1 diligence depends upon all the facts and circumstances of each case." *Christiansen*  
2 *v. Hollings*, 44 Cal. App. 2d 332, 346 (1941).

3 Dr. Bux's opinions fail to account for several critical factors affecting Mr.  
4 Silva's ability to comply.

5 *Physical Limitations.* Mr. Silva was a quadriplegic, paralyzed from C6-C7  
6 down. Dr. Bux admitted that Mr. Silva "was reliant on the nursing staff to do his  
7 nursing care, and in terms of moving him every two hours, they failed." Bux Depo.  
8 27:18–20(Exhibit A to Mayne Decl). When asked what activities he expected a  
9 quadriplegic to perform, Dr. Bux acknowledged: "Well, I'm not—I'm not an  
10 occupational therapist." Bux Depo. 62:4–7 (Exhibit A to Mayne Decl). By his own  
11 admission, Dr. Bux lacks both the expertise and the specific facts necessary to  
12 opine on what was functionally possible for someone in Mr. Silva's condition. His  
13 testimony therefore amounts to speculation about what he imagines Mr. Silva  
14 should have done, untethered from the actual circumstances Mr. Silva faced. Such  
15 speculation is irrelevant to the question before the jury, which requires an  
16 individualized analysis of what was reasonable for this individual.

17 *Mental State.* Dr. Bux failed to consider Mr. Silva's mental state and how  
18 that affected his ability to comply with medical directives. When asked whether  
19 someone who becomes quadriplegic may experience depression, Dr. Bux  
20 responded: "I think anybody can if it's—if it's right. I don't know whether he did or  
21 he didn't." Bux Depo. 47:2–10 (Exhibit A to Mayne Decl). Depression and suicidal  
22 ideation are well-documented consequences of spinal cord injury, as explained in  
23 the defense's own expert's report. (*See* Exhibit C to Mayne Decl.) In considering  
24 whether Mr. Silva's actions or inactions amounted to a failure to mitigate damages,  
25 the inquiry must be based on Mr. Silva's perspective, including his mental state.

26 As a forensic pathologist, Dr. Bux lacks the expertise to testify regarding  
27 what is functionally possible for a quadriplegic, how depression affects medical  
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1 compliance, or what constitutes "reasonable" self-care for someone in Mr. Silva's  
2 circumstances.

3 For the reasons above, Dr. Bux's opinions...

4 **D. Dr. Bux's Testimony Is Misleading and Not Helpful to the Jury**

5 Dr. Bux's proffered testimony fails to meet Rule 702's requirement that  
6 expert testimony "help the trier of fact." His testimony is misleading for two  
7 reasons.

8 *First*, to the extent Dr. Bux opines about the negligence of the nurses,  
9 doctors, and hospital in treating Mr. Silva, such testimony is irrelevant to the jury's  
10 determination of damages. Under California law, as reflected in CACI No. 3929:

11 If you decide that [Defendants are] legally responsible  
12 for [Plaintiff's] harm, [they are] also responsible for any  
13 additional harm resulting from the acts of others in  
14 providing medical treatment or other aid that [Plaintiff's]  
15 injury reasonably required, even if those acts were  
16 negligently performed.

17 Thus, even if the hospital or its staff negligently cared for Mr. Silva,  
18 Defendants remain responsible for the resulting harm. Testimony about the  
19 hospital's negligence is irrelevant to any issue the jury must decide and serves only  
20 to confuse and mislead.

21 *Second*, Dr. Bux's testimony appears designed to shift blame for Mr. Silva's  
22 death onto the victim himself. But as discussed above, Dr. Bux lacks foundation  
23 for these opinions and lacks the expertise to evaluate what Mr. Silva could  
24 reasonably have been expected to do given his condition. Further, his opinion fails  
25 to take consideration of what would a reasonable person would do in the  
26 circumstances faced by Mr. Silva, as he takes no account of his physical limitations  
27 or possible mental limitations that both were directly relevant to what Mr. Silva  
28 could do to mitigate his damages.

1 Mr. Bux's testimony on the challenged topics will not be helpful to a jury  
2 and will only serve to mislead and confuse the jury. Therefore, it should be  
3 excluded.

4 **IV. CONCLUSION**

5 For the foregoing reasons, Plaintiffs respectfully request that this Court  
6 exclude Dr. Bux's testimony regarding: (1) Mr. Silva's pain and suffering; (2) the  
7 standard of care for nurses and doctors, or that their negligent care caused Mr.  
8 Silva's death; and (3) any opinion that Mr. Silva caused or contributed to his own  
9 death through noncompliance with medical directives.

10  
11 Dated: December 11, 2025

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14 Dale K. Galipo  
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